IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

MFA.No. 229 of 2000()

OPMV.562/1989 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT:3RD RESPONDENT

THE NEW INDIA ASSURANCE COMPANY LTD.,
CHANGANACHERRY, NOW REPRESENTED BY ITS
ASSISTANT MANAGER, REGIONAL OFFICE,
M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENTS:PETITIONERS AND RESPONDENTS 1 AND 2
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1. **LAISAMMA VARGHESE, OVELIL KAVUPARAMBIL, KAKKAMTHODU, CHANGANACHERRY.**

2. **MARIAM @ SEENA (MINOR) RESIDING AT DO. DO.**

3. **THRESSIA @ LEENA (MINOR) RESIDING AT DO. DO.**

4. **PHILIP @ LINO (MINOR) RESIDING AT DO. DO.**

5. **MARIAMMA PHILIP, RESIDING AT DO. DO.**

6. **VARGHESE PHILIP, RESIDING AT DO. DO.**

7. **VARGEHSE @ JOLLY, KALLARAKKAL HOUSE, MOSCOW JUNCTION, MADAPPALLY, PERUMPANACHY P.O. CHANGANACHERRY.**

8. **JAMES V. MATHOOR, MATHOOR HOUSE, THRIKODITHANAM, CHANGANACHERRY (DIED)***

MFA NO.229/2000

***ADDITIONAL RESPONDENTS**

ADDL.R9. GRACE J.MATHUR, C/O.THRESSIAMMA VARGHESE, MATHUR HOUSE, THRIKKODITHANAM, CHANGANACHERRY.

ADDL.R10. JULIA MATHUR, C/O.THRESSIAMMA VARGHESE DO. DO.

ADDL.R11. PRAVEEN MATHUR, C/O.THRESSIAMMA VARGHESE, DO. DO.

ADDL.R12. PRIYAN MATHUR, C/O.THRESSIAMA VARGEHSE, DO. DO.

ADDL.R13. THRESSIAMMA VARGHESE, DO. DO.

(RESPONDENTS 9 TO 13 ARE IMPLEADED AS ADDITIONAL RESPONDENTS IN THE APPEAL AS PER ORDER DATED 3/1/06 IN IA NO.2898/05.)

(NO RELIEFS ARE CLAIMED AGAINST THE ADDL.4TH RESPONDENT IN THE ORIGINAL PETITION AND HENCE IS NOT MADE A PARTY IN THIS APPEAL.)

(MINOR RESPONDENTS 2 TO 4 ARE REPRESENTED BY THEIR MOTHER 1ST RESPONDENT).

BY ADV. SRI.SHINU J.PILLAI FOR R1 TO R6
SRI.A.SHANAVAS FOR R9 TO R13
SRI.SACHIN JOSEPH
SMT.SIBY.P.JOSE
SRI.C.M.ABRAHAM FOR R7

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA NO.229/2000

ORDER IN CMP NO.1325 OF 2000 IN MFA NO.229 OF 2000

DISMISSED

09/04/2007 **SD/-P.R.RAMAN, JUDGE**

SD/-ANTONY DOMINIC, JUDGE

//TRUE COPY//

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.F.A NO. 229 OF 2000
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Dated this the 9th day of April, 2007

J U D G M E N T

Raman, J.

The New India Assurance Company Limited, Changanacherry represented by its Assistant Manager is the appellant. The appellant is the insurer of an autorickshaw, which hit a pedestrian walking on the road, who ultimately succumbed to the injuries. The dependants namely the wife, children and parents of the deceased filed claim petition before the Motor Accidents Claims Tribunal, Kottayam as OP(MV) 562/1989 for compensation. It was contended that the accident occurred as a result of the negligence of the driver of the autorickshaw, who was arrayed as 1st respondent in the Tribunal and the owner of the autorickshaw was arrayed as the 2nd respondent. The Tribunal found that the accident occurred as a result of the negligence on the part of the autorickshaw driver. It proceeded to quantify the compensation awardable in the case and a total amount of Rs.2,32,000/- with 12% interest was awarded and the Insurance Company was

directed to deposit the amount.

2. The Insurance Company in the written statement specifically pleaded that it is only an Act Policy and as per Section 95(2) of the Motor Vehicles Act 1939, which was applicable to the case, the date of accident being 15/8/87, the maximum liability of the Insurance Company is limited to Rs.50,000/-. The policy was produced by the claimant himself and marked as A10 in the case. But the Tribunal held that in the absence of the proposal and the declaration produced by the Insurance Company, the limit of the liability as pleaded by them could not be substantiated. It further held that by virtue of an amendment brought out in 1982, the limit of the liability has been enhanced to Rs.1,50,000/-. In those circumstances, the entire liability was fastened on the Insurance Company. Hence this appeal.

3. We have perused the policy produced in the case. As per the policy, which is the contract of insurance between the owner of the vehicle and the Insurance Company, it can be seen that as far as the liability of the third parties are concerned, it is specifically provided that the limit of liability is subject to the limit of liability as laid down in the Motor Vehicles Act and that the

Insurance Company will indemnify the insured in the event of the accident caused by or arising out of the use of the Motor Vehicle in a Public place in India within the meaning of the Motor Vehicles Act, 1939 against such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939. Again in Clause 4 of the conditions, it says that except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act 1939, the Company shall not be liable in respect of death of or bodily injury to any person other than a passenger carried by reason of or in pursuance of a contract of employment being carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises. True that an amount of Rs.90 has been paid as an additional premium. The Tribunal thought that the additional premium will make the policy as an unlimited one. What has been paid as additional premium is towards passenger's legal liability premium. Being an autorickshaw, in order to cover three passengers additional premium was collected. There is nothing in the policy to indicate that there is any special contract entitling the owner of the vehicle to be indemnified in excess of

the statutory liability as fixed under the Act. As the law stood as on the date of the accident, in this case, the limit of the liability was only Rs.50,000/-. The amendment in 1982 is only to Section 95(2)(a) which applies only to goods vehicle. In the present case it is a passenger vehicle and the maximum liability as per the Act is only Rs.50,000/-. If so, the Tribunal erred in fixing the liability on the Insurance Company in excess of the statutory liability under Section 95(2). In this case, we may also refer to a Constitution Bench decision of the Apex Court in **New India Assurance Co.Ltd. v. Jaya** (**2002(1) KLT 596)** wherein it was held that in case of an Insurance policy not taking any higher liability by accepting a higher premium, the liability of the Insurance Company is neither unlimited nor higher than the statutory liability fixed under Section 95(2). In Para 18 of the aforesaid judgment, it was found that the appellant Insurance Company in that case, the liability is only for an amount of Rs.50,000/-

4. The learned counsel for the respondents however placing reliance on the decision of the Apex Court in **British Indian General Insurance Co. Ltd. v. Maya Banerjee and**

others (1986 SC 2110) contended that in the case where the claimant is a widow, the Supreme Court did not disturb the award, rather directed the Insurance Company to pay the amount at the first instance enabling them to recover the same amount over and above the statutory liability from the owner subsequently. We have perused the above judgment. That was a case where the total compensation was only Rs.30,000/- as against the limit of Rs.20,000/- as per the Act. In those circumstances, as a special case, the Apex Court directed the Insurance Company to satisfy the award at the first instance

5. On the other hand a Division Bench decision of this Court in **Oriental Insurance Co. Ltd v. Saji (1997(2) KLT 695)** rightly held that the decision of the Apex Court in Maya Banerjee's case (supra) is not a proposition which has a general applicability or having absolute operation. In the light of the Constitutional Bench decision of the Supreme Court and in the light of the statute contained in Section 95(2)(b) of the Motor Vehicles Act, 1939, we are of the view that the liability of the Insurance Company is limited to Rs.50,000/- with interest thereon, which they have already deposited. Since an amount of Rs.500 is

also awarded towards damage of the vehicle (hand cart), which liability has to be satisfied by the Insurance Company.

6. We make it clear that we are not disturbing the finding as regards the total compensation as awarded by the Tribunal in favour of the claimants. For the balance amount in excess of the statutory liability of the Insurance Company, it will be open to the claimants to proceed to recover the same from the driver and owner of the vehicle, who are jointly and severally liable to satisfy the award.

Appeal is allowed. The amount in deposit is allowed to be withdrawn by the claimants.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp